2006

# Ron Case Roofing & Asphalt Paving, L.L.C. v. Pegy Ann Sturzenegger, Peggy Ann Johnson Sturzenegger, Clarenece Gene Sturzenegger : Brief of Appellee

Utah Court of Appeals


Tyler B. Ayres; Attorney for Appellees.
Jason H. Robinson; Adam T. Mow; Babcock Scott and Babcock; Attorney for Appellant.

**IN THE UTAH COURT OF APPEALS**

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| **RON CASE ROOFING & ASPHALT PAVING, L.L.C.**, a Utah Limited Lability Company<br><br>Appellant/Plaintiff<br><br>vs.<br><br>**PEGGY ANN STURZENEGGER a.k.a PEGGY ANN JOHNSON STURZENEGGER**, an individual; **CLARENCE GENE STURZENEGGER**, an individual; and **JOHN DOES 1-10**<br><br>Appellees/Defendants | **COURT OF APPEALS NO.: 20060080** |

**BRIEF OF APPELLEES**

APPEAL FROM A FINAL JUDGEMENT OF THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY, STATE OF UTAH
HONORABLE JOHN PAUL KENNEDY PRESIDING

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ORAL ARGUMENT/PUBLISHED OPINION REQUESTED

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**BRIEF OF APPELLEES**

## JURISDICTION

This is an appeal from a final judgment of the Third Judicial District Court for Salt Lake County, State of Utah, Honorable John Paul Kennedy. This Court has jurisdiction in this matter pursuant to UTAH CODE ANN. §78-2-2(4) and UT. R. APP. P. 3.

## CONSTITUTIONAL AND STATUTORY PROVISIONS, STATEMENT OF ISSUES PRESENTED ON APPEAL, AND STANDARD OF REVIEW

**ISSUE I:** *Did the trial court err in denying Appellants pre-judgment and post-judgment interest?*

**STANDARD OF REVIEW:** Prejudgment interest may be recovered where the damage is complete, the amount of the loss is fixed as of a particular time, and the loss is measurable by facts and figures. Conia v. Wilcox, 898 P.2d 1379, 1387 (Utah 1985).

Generally, a "decision to grant or deny prejudgment interest presents a question of law which we review for correctness." *Id.* However, when the trial court applies the facts of the case to the law then the question is a mixed question of fact and law, and the factual basis underpinning the decision is subject to a clearly erroneous standard. State v. Pena, 869 P.2d 932, 945-36 (Utah 1994).

**ISSUE II:** *Did the trial court properly deny Appellants the ability to foreclose on the subject property?*

**STANDARD OF REVIEW:** As it pertains to a challenge to the trial court's statutory lien, this Court said it is "not bound to substitute our judgment for that of the trial court, and because of its advantaged position we give considerable deference to its findings and judgment." Baker v. Hansen, 666 P.2d 315, 318 (Utah 1983), *citing* Ream v. Fitzen, 581 P.2d 145, 147 (Utah 1978).

**ISSUE III:** *Did the trial court properly award damages to Appellees in the form of an offset?*

**STANDARD OF REVIEW:** "Because the adequacy of damages is a question of fact, the reviewing court cannot overturn the trial court's findings unless they are clearly erroneous." Aris Vision Institute, Inc. v. Wasatch Property Management, Inc., 2005 UT App 326, ¶18, 121 P.3d 24, *citing* In re Estate of Knickerbocker, 912 P.2d 969, 981 (Utah 1996). "Appellate courts will presume trial courts' award of damages to be correct and will overturn it only if it is clearly erroneous with no reasonable support in evidence." Forsberg v. Burningham & Kimball, 892 P.2d 23 (Utah App. 1995). The Utah Court of Appeals reviews "the trial court's decision to award damages under a standard which gives the court

considerable discretion, and will not disturb its ruling absent an abuse of discretion." Shar's Cars, L.L.C. v. Elder, 2004 UT App 258, ¶13, 97 P.3d 724 *citing* Lynsenko v. Sawaya, 1999 UT App 31, ¶6, 973 P.2d 445. "In fixing damages, trial court is vested with broad discretion, and award will not be set aside unless it is manifestly unjust or indicates that the trial court neglected pertinent elements, or was unduly influenced by prejudice or other extraneous circumstances." Mabey v. Kay Peterson Const. Co., Inc. 682 P.2d 287 (Utah 1984). "When a reasonable basis exists for the trial court's award of damages, Court of Appeals will affirm the damage award on appeal." Lefavi v. Bertoch, 2000 UT App 5, 994 P.2d 817.

**ISSUE IV:** *Are Appellants entitled to an increased attorneys' fees award should they prevail on appeal?*

**STANDARD OF REVIEW:** Determination of reasonable fees is in sound discretion of the trial court because of its familiarity with litigation, attorneys and attorney fees in general. Salmon v. Davis County, 916 P.2d 890, 892, 898 (Utah 1996). Because the Court of Appeals is not in an "advantaged position" to make such determinations, [it is afforded] considerably less discretion." see, State v. Pena, 869 P.2d 932, 936, 938-40 (Utah 1994). "The appellate court is entrusted with ensuring legal accuracy and uniformity and should defer to the trial court on factual matters" such as an award of attorneys fees. Willey v. Willey, 951 P.2d 226, 230-231 (Utah 1997).

## DETERMINATIVE CONSITUTIONAL AND STATUTORY PROVISIONS

A. UNITED STATES CONSTITUTION

B. UTAH CONSTITUTION

C. UTAH CODE ANN. §15-1-1 (2005)

D. UTAH CODE ANN. §15-1-4 (2005)

E. UTAH CODE ANN. §38-1-15 (2005)

F. UTAH CODE ANN. §78-22-1 (2005)

## STATEMENT OF THE CASE

On August 2, 2005, this matter came before the Honorable John Paul Kennedy for the purpose of a bench trial on the issues in the complaint ("**Complaint**") filed October 17, 2003, by Ron Case Roofing ("**Appellants**") regarding the property at Lot 1, Lakewood #6, SUB. Parcel No. 22-16-206-011-0000 or 1849 East 5600 South, Salt Lake City, Utah ("**Property**") which is a property owned by Peggy Ann Sturzenegger and Clarence Gene Sturzenegger ("**Appellees**"). The Complaint alleges that "the property is the subject of a mechanic's lien foreclosure action herein arising out of Ron Case Roofing's having performed certain roofing work, at the request of Peggy Sturzenegger, for which Ron Case Roofing has not been paid in full." (Rec. p. 3, ¶6) Appellants alleged the first cause of action as a breach of contract (Rec. p. 3), the second cause of action as unjust enrichment/quantum Meruit, and the fourth cause of action[1] as foreclosure of lien (Rec. p. 4).

On or around April 14, 2003, the parties entered into a contract in which the Appellants agreed to complete roofing work for the Appellees at the Property. During the course of the work commencing, the ceiling of the master bedroom was damaged by the

[1]Appellant's Complaint does not state a third cause of action. Appellee has cited to the document as it is in the record.

employees of Ron Case Roofing. Appellee hired another company to fix the damage to the ceiling of the master bedroom and the cost do so was contested by the Appellants. The contested issues came for trial before Honorable John Paul Kennedy on August 2, 2004..

On October 13, 2005, the Honorable John Paul Kennedy entered the Final Judgment (the "**Judgment**") in favor of Ron Case Roofing against Appellees for the following; (1) principal in the amount of $10, 264.00; (2) costs in the amount of $487.65; and (3) attorney Fees in the amount of $10,000.00. Furthermore, the trial court determined that Appellants were the prevailing party. Appellees satisfied the Judgment in full on the date it was entered.

On or around October 20, 2005, Appellants filed their *Motion to Reconsider Amount of Attorneys Fees included in Final Judgement*, asking the trial court to amend the amount of the attorney fees awarded at trial. On January 9, 2006, the trial court denied the Appellants' motion, deeming the judgment final.

On or around January 25, 2006, Appellants filed their *Notice of Appeal* from the Judgment. On February 15, 2006, Appellants filed their *Docketing Statement* with the Utah Court of Appeals, challenging the trial courts' refusal to award pre-judgment and post-judgment interest at the rate expressly specified in the subject contract, the trial courts' refusal to allow Ron Case Roofing to foreclosure on the subject property, the trial courts' awarding damages in the form of an offset; the trial courts' reduction of cost of the sheeting materials, and the trial courts' reduction of attorneys fees. Appellants briefed the issues contained in their docketing statement.

## STATEMENT OF FACTS

On or around November 19, 2002, Appellants met with Appellees at the Property and provided them with a proposal for roof work, specifically for an entire tar and gravel roof, new rain gutters, new vents, color coated metal. The original bid was for a total of $12,450.00. (Tr. p. 8-9). On or around April 14 2003, the Appellees signed the contract by Ron Case Roofing and payed a $6000.00 down payment. As a result, the work commenced shortly thereafter. (Tr. P. 13, lines 5-8).

Appellants encountered a problem during the course of their work. Respecting the section of the roof over the master bedroom of the Property, they discovered that the nails were damaging the ceiling of the master bedroom due to it having a vaulted tongue and groove ceiling to that particular part of the roof. Appellants testified that they were unaware of the vaulted tongue and groove ceiling due to the Appellees failing to inform them of such roof. (Tr. P. 10, lines 25; p. 11, lines 1-3). However, by the Appellants' own admission, he just "assumed it was just one layer of roofing." (Tr. P. 5, lines 11-13)

During the course of providing the Appellants with a new roof, the roofers also encountered an old gravel roof stuck to the sheeting boards. Appellants testified that 4,000 square feet out of 4,600 square feet were in this condition, which required extra work to be undertaken to remove the prior roof. The photographs taken by Appellants of the multiple roofs failed to establish for the trial court that it was the Appellees' residence. By Shane Case's own testimony, he did not even think to take photos that would identify the location of the photos taken (Tr. P. 68, lines 15-25). Appellants removed all of the layers of the

roofing materials from the Property (Tr. P. 17-18). Moreover, they proceeded doing this without obtaining permission from Appellees.

Appellants claimed that Appellees did not provide him with any phone numbers, but admits when asked that he had attempted to call them (Tr. P. 19, lines 18-21). Furthermore, Appellants admitted to contacting Appellees maybe "once or twice" during the months between the time of his giving her the proposal and her signing it, evidencing that he had sufficient contact information (Tr. P. 40-41).

Peggy Sturzenegger testified that she left for Hawaii without letting them know where she was or when she would return due to the fact that she had been robbed twice in the past five (5) years, and thus did not want to risk that happening again. (Tr. P. 143-144). Shane Case testified that he did not inform Ms. Sturzenegger that she had multiple roofs before commencing removal of the prior roof (Tr. P. 50, lines 6-7). Appellants testified that they commenced work under paragraph 13 of the Contract, which states as follows:

> If a problem should arise and workmen cannot contact Customer, Contractor will proceed with job utilizing Contractor's best judgement. In the event that additional costs are incurred by Contractor under these circumstances, Customer authorizes Contractor to proceed with the project and agrees to pay any increase in costs.

(*See Appellant's brief, Addendum*). Appellant, Shane Case testified that he included the provisions in the contract to continue working when unable to reach a customer (Tr. P. 57, lines 20-24). Appellants further testified that they did not notify the buyer of the provisions on the back page of the contract, nor do they regularly practice informing customers that there is a list of the provisions on it. (Tr. P. 47, lines 9-18). Furthermore, that he did not in

any way inform Appellees that there was a chance of a second roof. (Tr. P. 50, lines 5-14). Appellants testified that they did not provide the Appellees with any notice that there may be differences in the bid that could only be known if he were to be allowed access to visually inspecting the inside of her house, although testimony was provided that Appellants should have recognized that there was possibly an anomaly that needed to be determined. (Tr. P. 58-59).

During the course of the work commencing, the ceiling of the master bedroom was damaged by the employees of Ron Case Roofing. Appellees counsel sent numerous letters to Ron Case Roofing asking them to repair the damage to the master bedroom ceiling. (Tr. P. 191, lines 12-16; exhibits 35 and 36). Appellees contracted with Scorpion of Salt Lake to repair the damage because she did not approve of the offer Ron Case Roofing had made her to complete the repairs. (Tr. P. 137, lines 1-22). Appellees had to pay Scorpion a fee of $3000.00 to complete the repairs on the master bedroom ceiling that was damaged by Appellants (Tr. P. 138, line 15).

When Ron Case Roofing had completed the original work agreed upon as well as the additional work, the final invoice amount totaled $16, 578.00 (Tr. P. 30, line 6). Appellants appeared at the Appellees house and forcefully shoved the contract at her with all these added expenses and demanded that she sign them, and she refused to do such thing and informed him that she did not desire to speak with him. At that point, he informed her not to contact an attorney, that they could work things out between them. (Tr. P. 144, lines 20-25 & p. 145, lines 1-7).

On October 17, 2003, Ron Case Roofing filed a *Complaint* in this matter in the Third Judicial District Court, alleging breach of contract by the Appellees in this matter. Moreover, on June 13, 2003, a mechanic's lien was placed on the Property at issue in these proceedings pursuant to UTAH CODE ANN. §38-1-1.

On August 2, 2004, this matter came before the Honorable John Paul Kennedy for the purpose of a bench trial. During the course of the trial, Appellants' expert witness who had previously worked for Ron Case Roofing and twice testified for them (Tr. P. 176, lines 11-19), admitted that contractors should limit their liability in their contracts when it comes to damages. (Tr. P. 167, lines 15-21). The same expert then testified that he believed that Ron Case Roofing is responsible for the ceiling damage in the master bedroom in this matter. (Tr. P. 168, line 11-15). The expert witness for Appellees testified that the first page of the contract of Ron Case Roofing is rather common; however, the second page with all of the stipulations and liability information "is quite unique to Ron Case Roofing." (Tr. 215-216). On October 13, 2005, Judge Kennedy entered the Judgment in favor of Ron Case Roofing against Appellees for the following; (1) principal in the amount of $10, 264.00; (2) Costs in the amount of $487.65; and (3) Attorney Fees in the amount of $10,000.00. Furthermore, the trial court determined the Appellants as the prevailing party. Appellees satisfied the Judgment in full on the date it was entered.

On or around October 20, 2005, Appellants filed their *Motion to Reconsider Amount of Attorneys Fees included in Final Judgement*, asking the trial court to amend the amount

of the attorney fees awarded at trial. On January 9, 2006, the trial court denied the Appellants' motion, deeming the Judgment final.

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## SUMMARY OF ARGUMENT

The Utah Supreme Court has specifically indicated that it will decline to address a challenge to the sufficiency of the evidence if an appellant fails to meet its burden of marshaling because they ". . .merely restate[] or review[] the evidence that supports an alternate finding or a finding contrary to the trial court's established finding of fact." Wilson Supply, Inc. v. Fradan Mfg. Corp., 2002 UT 94, 54 P.3d 1177. In the instant matter, Appellants have failed to marshal any of the evidence to contradict the trial court's finding that it was without sufficient evidence to award prejudgment or postjudgment interest. As such, this Court should decline to address such a challenge.

Alternatively, the trial court is given a large amount of discretion in determining an award of prejudgment or postjudgment interest. The Utah Supreme Court has previously

held that the denial of prejudgment interest is appropriate when the action is for equitable relief in cases involving the invocation of foreclosure and enforcement of a contract, since ". . .consideration of the principles of equity [] address themselves to the conscience and discretion of the trial court." Bellon v. Malnar, 808 P.2d 1089, 1097 (Utah 1991), *citing* Fullmer v. Blood, 546 P.2d 606, 610 (Utah 1976). Further, any claim as to postjudgment interest is moot by the fact that Appellees satisfied the Judgment on the date that it was entered. Appellants have failed to show how the trial court abused its discretion in denying prejudgment and postjudgment interest in a matter pertaining to the principles of equity.

A basic principal pertaining to civil litigation is that a defendant to an action may raise any issue and assert any defense which will operate to defeat a plaintiff's claim. *See,* Stewart Livestock Co. v. Ostler, 144 P.2d 276 (Utah 1943); *see also,* UT. R. CIV. P. 12 and 13. More particularly in foreclosure actions, a defendant may plead defenses by way of offset or counterclaims, and a defendant should be permitted to offset any and all damages they may reasonably have sustained through the contractor's work. Stewart Livestock at 281. The Utah Supreme Court has long held that a trial courts' decision to refuse foreclosure in matters will only occur if the trial courts' decisions are arbitrary or capricious. Walker Bank & Trust Co. v. Neilson, 26 Utah 2d 383, 490 P.2d 328 (Utah 1971). As stated *supra,* the foreclosure issue argued by Appellants in their brief is also moot by the fact that Appellees satisfied the Judgment in full on the date that it was entered. The trial court's determination to offset the Judgment was neither arbitrary nor capricious and was properly undertaken in consideration of the evidence presented at trial.

The Utah Court of Appeals reviews "the trial court's decision to award damages under a standard which gives the court considerable discretion, and will not disturb its ruling absent an abuse of discretion." Shar's Cars, L.L.C. v. Elder, 2004 UT App 258, ¶13, 97 P.3d 724 *citing* Lynsenko v. Sawaya, 1999 UT App 31, ¶6, 973 P.2d 445. "In fixing damages, trial court is vested with broad discretion, and award will not be set aside unless it is manifestly unjust or indicates that the trial court neglected pertinent elements, or was unduly influenced by prejudice or other extraneous circumstances." Mabey v. Kay Peterson Const. Co., Inc. 682 P.2d 287 (Utah 1984). "When a reasonable basis exists for the trial court's award of damages, Court of Appeals will affirm the damage award on appeal." Lefavi v. Bertoch, 2000 UT App 5, 994 P.2d 817. As argued further below, a reasonable basis existed for the trial court to award the damages in the manner set forth in the Judgment. The Appellants have failed to overcome the trial court's broad discretion in this area and the damage award should thus be affirmed on appeal.

In Willey v. Willey, the Utah Supreme Court overturned this Court's determination as to attorneys fees and remanded the issue to the trial court for their analysis, finding that appellate courts should defer the issue to ensure legal accuracy and uniformity. *Ibid.*, 951 P.2d 226, 230-231 (Utah 1997). Case law supports the award of attorneys' fees on appeal where the prevailing party at trial also prevails on appeal, but it appears to only be in instances where the prevailing party was required to *defend* themselves. Appellants prevailed in the trial court where Appellees were required to defend themselves. Appellants then appealed their decision, having been dissatisfied with the Judgment, and again required

Appellees to incur the cost of again defending themselves on appeal. Appellants should not be awarded attorneys fees on appeal since they received an adequate Judgment in the trial court for their claims.

## ARGUMENT

### I. TRIAL COURT PROPERLY REFUSED TO AWARD PRE-JUDGMENT INTEREST AND POST-JUDGMENT INTEREST.

#### A. Appellants Failed to Marshal the Evidence Against the Trial Court's Findings That There Was Insufficient Evidence to Support an Award of Prejudgment or Postjudgment Interest.

UT. R. APP. P. 24(a)(9) states that "[a] party challenging a fact finding must first marshal all record evidence that supports the challenged finding." Recently, the Utah Supreme Court held that "[m]arshaling evidence in support of the ultimate finding is a prerequisite to a challenge to it." Parduhn v. Bennett, 2005 UT 22, 112 P.3d 495. The Utah Supreme Court has also held that "[a] party must marshal all of the evidence supportive of the verdict in its opening brief." Harding v. Bell, 2002 UT 108, 57 P.3d 1093.

The Utah Supreme Court defined the marshaling requirement, stating that "specifically, our marshaling rule requires plaintiffs to 'marshal all the evidence in favor of the facts as found by the trial court and then demonstrate that even viewing the evidence in a light most favorable to the court below, the evidence is insufficient to support the findings of fact.'" *Save our Schools v. Board of Educ. Of Salt Lake City*, 2005 UT 55 ¶10, 122 P.3d 611 citing *Chen v. Stewart*, 2004 UT 82 ¶76, 100 P.3d 1177. As this Court has determined, marshaling is "[a] critical requirement of appellate advocacy" when challenging the

sufficiency of the evidence. West Valley City v. Hoskins, 2002 UT App 223, 51 P.3d 52.

> [T]he challenger must present, in comprehensive and fastidious order, every scrap of competent evidence introduced at trial which supports the very findings the challenger resists, and after constructing this magnificent array of supporting evidence, the challenger must ferret out a fatal flaw in the evidence which must be sufficient to convince the appellate court that court's finding resting upon the evidence is clearly erroneous.

*Id.* "Marshaled facts in an appellant's brief should correlate particular items of evidence with the challenged findings, supporting the findings with all available evidence in the record, and only then should appellant attempt to demonstrate how the challenged findings are clearly erroneous." Neely v. Bennett, 2002 UT App 189, 51 P.3d 724, *cert. denied,* 59 P.3d 603. "Parties challenging factual findings must fully embrace the adversary's position and play devil's advocate." Parduhn v. Bennett, 2005 UT 22, 112 P.3d 495. To successfully marshal the evidence, ". . .the party must therefore temporarily remove its own prejudices and fully embrace the adversary's position." Harding v. Bell, 2002 UT 108, 57 P.3d 1093.

It is clear, and the appellate courts have long held, that the burden of marshaling is on the Appellant. State v. Martinez, 2002 UT App 126, 47 P.3d 115. The Utah Supreme Court has articulated the purpose behind this stringent requirement in a recent holding, as follows:

> A proper marshaling of the evidence in support of the trial court's findings of fact promotes efficiency by avoiding a retrying of the facts and by assisting the appellate court in its decision-making and opinion writing, and it promotes fairness by requiring that the appellants bear the expense and time of marshaling the evidence rather than putting the appellee in the precarious position of performing the appellant's work at considerable time and expense.

Chen v. Stewart, 2004 UT 82, 100 P.3d 1177, *rehearing denied.* The burden cannot be shifted to the appellee or the appellate court.

It is important to note that "[a]n appellant challenging an ultimate finding of fact may not simply review the evidence presented at trial or re-argue the factual case presented in the trial court." Parduhn v. Bennett, 2005 UT 22, 112 P.3d 495. The Utah Supreme Court has specifically indicated that it will decline to address a challenge to the sufficiency of the evidence if an appellant fails to meet its burden of marshaling because they ". . .merely restate[] or review[] the evidence that supports an alternate finding or a finding contrary to the trial court's established finding of fact." Wilson Supply, Inc. v. Fradan Mfg. Corp., 2002 UT 94, 54 P.3d 1177. The Utah Court of Appeals has declined to address a challenge to the sufficiency of the evidence when an appellant merely selected facts from trial that were most favorable to its position, then attempted to reargue those facts on appeal. Ohline Corp. v. Granite Mill, 849 P.2d 602 (Utah App. 1993). "[M]ere reference to where evidence supporting verdict can be located does not constitute 'marshaling.'" State ex rel. W.A., 2002 UT 127, 63 P.3d 607, *cert. denied* 123 S.Ct. 2092, 538 U.S. 1035, 155 L.Ed.2d 1065. Additionally, unchallenged findings are assumed to be adequately supported by the record. *See,* Chen v. Stewart, 2004 UT 82, ¶ 19, 100 P.3d 1177.

In the instant case, the trial court determined that it had not received sufficient evidence through photos, testimony, or expert testimony to award pre-and post-judgment interest to the Appellants. The trial court explained in its oral findings that it believed that Appellants workmanship provided to the Appellees was deficient in areas. The trial court

determined, as a matter of law, that it had the right and responsibility to provide justice. Appellants have failed to adequately marshal the evidence presented at trial as required by UT. R. APP. P. 24(a)(9) and case law cited *supra*. Appellants simply argue case law respecting the award of prejudgment or postjudgment interest without attempting to overcome the trial court's explicit finding that it was without sufficient evidence to award such. *See, Brief of Appellant* at pp. 12-15. In essence, the trial court did not believe the Appellants met their burden of showing their entitlement to such an award and, without meeting the marshaling requirement on appeal, this Court should decline to address the challenge to the findings of the trial court and should affirm its denial of prejudgment and postjudgment interest accordingly.

B. The Trial Court Adequately Determined That Appellants Should Not Be Awarded Prejudgment or Postjudgment Interest in this Matter.

Should this Court determine that the marshaling requirement was unnecessary, it should affirm the trial court's determination on the prejudgment and postjudgment interest in accordance with standing precedent. The 10th Circuit Court of Appeals provides helpful guidelines when discussing and determining prejudgment interest awards. In deciding a Utah case they stated as follows:

> Under Utah law, a prejudgment interest award is proper when the damage is complete and the loss can be measured by facts and figures; a court may only award prejudgment interest if damages are calculable within a mathematical certainty.
>
> Damages that distributor suffered from customer's breach of contract were not calculable with mathematical certainty, and thus distributor was not entitled prejudgment interest under Utah law, although jury granted particular damages award; distributor had not been able to calculate its damages before trial or

> even during trial, distributor did not submit any evidence in support of its claim of 35% gross profit margin, and distributor did not provide any written support for its claimed travel costs and other expenses.
>
> Under Utah law, a plaintiff's inability to calculate its damages accurately may bar the award of prejudgment interest.....For a prejudgment interest award to be proper under Utah law, not only must damages be calculable within a mathematical certainty, but also the amount of loss must be fixed as of a particular time.

Pro Axess, Inc. v. Orlux Distribution, Inc., 428 F.3d 1270 (C.A.10 (Utah) 2005). This Court has also provided assistance in clarifying and understanding our laws here in Utah. This Court has stated as follows:

> Prejudgment interest is awarded to compensate a party for the depreciating value of the amount owed over time and, as a corollary, to deter parties from intentionally withholding an amount that is liquidated and owing.
>
> For damages to be calculable with mathematical certainty, as required to award prejudgment interest, they must be ascertained in accordance with fixed rules of evidence and known standards of value, which the court or jury must follow in fixing the amount rather than be guided by their best judgment in assessing the amount to be allowed for past as well as for future injury, or for elements that cannot be measured by any fixed standards of value.

Lefavi v. Bertoch, 994 P.2d 817 (Utah App. 2000). The Utah Supreme Court has previously held that the denial of prejudgment interest is appropriate when the action is for equitable relief in cases involving the invocation of foreclosure and enforcement of a contract, since ". . .consideration of the principles of equity [] address themselves to the conscience and discretion of the trial court." Bellon v. Malnar, 808 P.2d 1089, 1097 (Utah 1991), *citing* Fullmer v. Blood, 546 P.2d 606, 610 (Utah 1976).

The issue of postjudgment interest is easily dispensed of by the fact that Appellee satisfied the Judgment in full on the date that it was entered. Hence, even if the trial court had awarded postjudgment interest, it would not have applied to the instant matter. Appellants issues surrounding the denial of postjudgment interest is thus moot.

Appellants' *Complaint* alleges that "the [P]roperty is the subject of a mechanic's lien foreclosure action herein arising out of Ron Case Roofing's having performed certain roofing work, at the request of Peggy Sturzenegger, for which Ron Case Roofing has not been paid in full." (Rec. p. 3, ¶6) Appellants alleged the first cause of action as a breach of contract (Rec. p. 3), the second cause of action as unjust enrichment/quantum meruit, and the fourth cause of action[2] as foreclosure of lien (Rec. p. 4). Similar to Bellon v. Malnar, this Court should decline to overturn the trial court's denial of prejudgment interest in a case involving the principles of equity. Where the matter involves the invocation of foreclosure and enforcement of a contract, the trial court should be given the conscience and discretion to such determination. In the instant matter, the trial court determined that it had not received sufficient evidence through photos, testimony, or expert testimony to award pre- and post-judgment interest to the Appellants. This Court should affirm its determination since the trial court is in the best position to determine the sufficiency of the evidence as it pertains to the award of prejudgment and postjudgment interest in actions pertaining to the principles of equity.

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[2] *See* footnote "1" *supra.*

## II. THE TRIAL COURT PROPERLY DENIED RON CASE ROOFING'S REQUEST TO FORECLOSE ON THE SUBJECT REAL PROPERTY TO COLLECT ITS JUDGMENT.

A basic principal pertaining to civil litigation is that a defendant to an action may raise any issue and assert any defense which will operate to defeat a plaintiff's claim. *See*, Stewart Livestock Co. v. Ostler, 144 P.2d 276 (Utah 1943); *see also*, UT. R. CIV. P. 12 and 13. More particularly in foreclosure actions, a defendant may plead defenses by way of offset or counterclaims, and a defendant should be permitted to offset any and all damages they may reasonably have sustained through the contractor's work. Stewart Livestock at 281. The Utah Supreme Court has long held that a trial courts' decision to refuse foreclosure in matters will only occur if the trial courts' decisions are arbitrary or capricious. Walker Bank & Trust Co. v. Neilson, 26 Utah 2d 383, 490 P.2d 328 (Utah 1971).

Recognizing Appellants contribution to the causes of action alleged against the Appellees, the trial court ordered the following with regard to the lien and foreclosure in this matter, specifically as follows:

> This judgment shall be a judgment lien on and against that certain real Property located at approximately 1849 East 5600 South, Salt Lake City, Utah. The Judgment lien shall relate back to and take effect as of April 22, 2003, and shall be superior to and have priority over, as a matter of time and right, any and all encumbrances recorded against the Property subsequent thereto. The Judgment lien shall attach to any and all interest held in and to the Property by Peggy Sturzenegger and/or Gene Sutrzenegger.
> Ron Case Roofing shall not be allowed to execute on its Judgment lien against the Property unless and until such time as the Property is sold or otherwise transferred. In the meantime, however, Ron Case Roofing may execute on and against any other real and personal Property and may use all other legal means of and methods for collecting its Judgment.

(Final Judgment dated October 12, 2005, p. 3; attached hereto as Addendum B). Moreover, in this matter it is evident that, based upon the evidence the trial court received in this case, it was not satisfied that foreclosure was justified and that Appellants were not entirely faultless in the matter. For instance, the trial court heard expert testimony that the Appellantss' second page of their contract was not common at all and was specific to Ron Case Roofing. (Tr. 215-216). The trial court additionally heard evidence that the price for sheeting was the "high end of the ballpark" (Tr. P. 218 lines 1-6). Furthermore, the expert for the Appellants testified that was impossible to know how many roofs a roof has without tearing it off. (Tr. p. 170, lines 5-25) However, the expert for Appellees, did not have that same opinion at all. In Appellee's expert opinion, Ron Case Roofing should have been able to tell the condition of the roof and the materials they would need without tearing off the roof with conducting a simple visual inspection, an inspection inside the house as well as taking test cuts from the roof in different areas. (Tr. P. 224-225). Therefore, although the trial court entered a judgment in favor of the Appellants, it also awarded the Appellees on several of her counterclaims. The offset did not eliminate the amount owed to Ron Case Roofing, and thus the trial court considered it the prevailing party.

The trial court specifically stated that it was amending the Mechanics Lien to a judgment lien, which now takes precedence over the previous lien held in this matter. As we can see, the trial courts' decision to refuse to allow the Appellants to foreclose on the Property was not arbitrary nor capricious. Additionally, the issue surrounding the foreclosure is moot by the fact that Appellees satisfied the Judgment in full on the date that it was

entered, so no foreclosure was necessary to a satisfaction of either the Mechanics Lien or the Judgment lien allowed by the trial court in its Judgment. Therefore, the trial court did not err in refusing Appellants to foreclose on the Property in this matter.

## III. THE TRIAL COURT PROPERLY AWARDED DAMAGES IN THE FORM OF AN OFFSET FOR DAMAGE TO THE MASTER BEDROOM CEILING AND WORKMANSHIP DEFICIENCIES.

"Because the adequacy of damages is a question of fact, the reviewing court cannot overturn the trial court's findings unless they are clearly erroneous." Aris Vision Institute, Inc. v. Wasatch Property Management, Inc., 2005 UT App 326, ¶18, 121 P.3d 24, *citing* In re Estate of Knickerbocker, 912 P.2d 969, 981 (Utah 1996). "Appellate courts will presume trial courts' award of damages to be correct and will overturn it only if it is clearly erroneous with no reasonable support in evidence." Forsberg v. Burningham & Kimball, 892 P.2d 23 (Utah App. 1995). The Utah Court of Appeals reviews "the trial court's decision to award damages under a standard which gives the court considerable discretion, and will not disturb its ruling absent an abuse of discretion." Shar's Cars, L.L.C. v. Elder, 2004 UT App 258, ¶13, 97 P.3d 724 *citing* Lynsenko v. Sawaya, 1999 UT App 31, ¶6, 973 P.2d 445. "In fixing damages, trial court is vested with broad discretion, and award will not be set aside unless it is manifestly unjust or indicates that the trial court neglected pertinent elements, or was unduly influenced by prejudice or other extraneous circumstances." Mabey v. Kay Peterson Const. Co., Inc. 682 P.2d 287 (Utah 1984). "When a reasonable basis exists for the trial court's award of damages, Court of Appeals will affirm the damage award on appeal." Lefavi v. Bertoch, 2000 UT App 5, 994 P.2d 817.

Appellants specifically set forth in their *Brief of Appellant* as follows:

> The Utah Supreme Court has explained that to prove damages, a party must prove (1) "the fact of damages and (2) "the amount of damages." Atkin Wright & Miles v. Mountain States Tel. & Tel. Co., 709 P.2d 330, 336 (Utah 1985). In measuring the damages, the claimant has the burden of proving the reasonableness of the cost of the repairs. 25 C.J.S. Damages, §144. There "must be evidence that rises above speculation and provides a reasonable...estimate of damages." Atkin Wright, 709 P.2d at 336. In Atkin Wright, the Utah Supreme Court reversed the jury's award of damages because the party claiming damages, while offering sufficient proof of the fact of damages, failed to offer sufficient proof of the amount of its damages. **Id.** At 337. Similarly, in the case now before the Court, Sturzenegger offered insufficient evidence as to the amount of damages she sustained from the damage to her master bedroom ceiling and defects in the construction of the new roof.

*(See Brief of Appellant, p. 17, ¶3)*. Appellants, fail to provide this Court with the additional assistance and clarity the Utah Supreme Court provided in the Atkin Wright case. The Utah Supreme Court stated as follows:

> Level of persuasiveness required to establish fact of loss in proving damages is generally higher than that required to establish amount of loss, and while standard for determining amount of damages is not so exacting as standard for proving fact of damages, there still must be evidence that rises above speculation and provides a reasonable, even though not necessarily precise, estimate of damages....Amount of damages may be based upon approximations, if fact of damage is established, and the approximations are based upon reasonable assumptions or projections.

Atkin Wright & Miles v. Mountain States Tel. & Tel. Co., 709 P.2d 330, 336 (Utah 1985).

Appellees under oath testified that they paid another company $3,000.00 to repair the roof. (Tr. P. 138, line 15). Moreover, Appellees paid another Contractor ***after*** Appellees' counsel had sent numerous letters to Ron Case Roofing asking them to repair the damage to the ceiling. (Tr. P. 191, lines 12-16; exhibits 35 and 36; emphasis added). The trial court

awarded an offset of $2400.00 due to the fact that Appellees failed to bring evidence to court regarding the amount. In its determination, the trial court recognized that, had it allowed Appellees counsel to take a recess during trial, Appellee would have been able to provide the evidence to support the price of $3000.00. Therefore, the trial court reduced the amount of the offset. A $600.00 deduction was reasonable considering these circumstances. Appellants argue that because the trial court used "Kentucky Windage numbers," it mistakenly used evidence of payment to support the amount of damages. (*See Brief of Appellant*, p. 19, ¶1)[3]. Appellants, however, have failed to support with any legal authority this contention that the trial court's determination was mistaken. Arguably, the trial court was extremely fair in deducting $600.00 as an offset on this issue. Moreover, the trial court was within its discretion to do so pursuant to the evidence it had before it. The trial court did not err in awarding these damages and was very fair in its determination and deduction to both parties.

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[3] Appellants set forth their definition of "Kentucky Windage" in fn. 2 on p. 19 of their brief; however, their definition appears abstract compared with the generally accepted definition in researching the term online. The term appears to plainly mean a method of target shooting where the shooter deliberately aims off-target to compensate for a moving target, weather conditions, or just a bad sight on the rifle. *See*, www.shotinthedark.info/archives/004248.html; *see also,* www.snipercountry.com/Compendium/Comp_K.htm ("An estimate of the modified point of aim required to compensate for wind or for target movement."); www.urbandictionary.com/define.php?term=Kentucky+Windage ("When shooting a rifle, the adjusted point of aim when compensating for wind. The rifleman made sure to check his kentucky windage"); www.cyto.purdue.edu/hmarchiv/1998/1909.htm ("Kentucky windage" refers to a skill used in firing large bore rifles at a moving target with a cross wind.); www.hray.com/idiom/php/idiom.php?idiomid=1928 (Nowadays, Kentucky Windage is used to describe any situation where you go out of your way to work around a problem.). Research conducted nationwide on Westlaw respecting the term did not present *any* case law contrary to the use of this procedure herein. Regardless, any disputes among the parties as to the defining of such a term should be left to the trial court who is in the best position to define its use of it herein.

Appellee sufficiently and successfully argued that the master bedroom ceiling had been damaged by Appellants. The evidence sufficiently supported the amount of those damages. *See*, Atkin Wright at 336. Appellants argument thus fails.

## IV. THE TRIAL COURT PROPERLY OFFSET THE JUDGMENT BASED ON POOR WORKMANSHIP BY REDUCING THE AWARD FOR ADDITIONAL SHEETING MATERIALS FROM $1.59 PER SQUARE FOOT TO $1.25 PER SQUARE FOOT.

The trial court found that there were there certain deficiencies with the roof system installed by Ron Case Roofing (Rd. P. 257, ¶21). Moreover, expert testimony presented evidenced that the asphalt used was inadequate, that it would not be considered a workman like manner to puncture the ceiling of the tongue and groove of the bedroom, and that a good contracting firm under due diligence would take steps necessary to provide an accurate bid by conducting research through investigating the home and conducting test cuts. (Tr. P. 223-224). This evidence clearly supports the trial court's determination to setoff the amount of the sheeting in its award of damages.

Had the Appellants conducted the necessary investigation of the home prior to work commencing, testimony evidences that the bid would have been more accurate and they would have known that extra sheeting materials would have been needed. However, Appellants failed to conduct the necessary research and inspection/investigation of the home prior to commencing work. As a result of this negligence, it created excessive extra work that needed to be done, increasing the original bid by thousands of dollars. The trial court specifically articulated in its oral findings that it reduced the amount from $1.59 to $1.25 not

as a determination that this was the cost involved in the sheeting, but rather as a type of penalty for what he believed was unreasonable decision-making by the contractor to undertake such a vast amount of additional work without speaking to the owner. (Tr. P. 19, lines 18-24)

As this Court can see, the trial court specifically articulated its reasoning for its finding and decision as to this offset and did rely upon the evidence presented. The evidence sufficiently supported the trial court's finding that it needed to somehow offset the cost based on the faulty workmanship and it chose to do so here. The trial court's determination to reduce the amount from $1.59 to $1.25 was reasonably supported by the evidence. See, Forsberg v. Burningham & Kimball, 892 P.2d 23 (UT. App. 1995). The trial court is given considerable discretion and the Appellants have failed to show any cause for this court to disturb its Judgment. *See*, Shar's Cars, L.L.C. v. Elder, 2004 UT App 258, ¶13, 19 P.3d 724 (citation omitted).

## V. APPELLANTS ARE NOT ENTITLED TO HAVE THIS COURT AMEND THE AWARD OF ATTORNEYS FEES TO INCLUDE THOSE INCURRED IN THIS APPEAL.

The Utah Supreme Court in a recent decision stated as follows:

> Standard of review allocates discretion between trial and appellate courts, and in determining the appropriateness of a particular allocation of responsibility for deciding an issue or class of issues, account should be taken of the relative capabilities of each level of the court system to take evidence and make findings of fact in the face of conflicting evidence, on the one hand, and to set binding jurisdiction-wide policy, on the other....Although the award of attorney fees is typically a matter of law which is reviewed for correctness, where the fees are predicated upon findings of fact, the award is reviewed for an abuse of discretion...Recognizing the broad discretion given to trial courts in these

> matters, appellate court reviews a trial court's decision to grant or not to grant attorney fees under the Utah Arbitration Act for an abuse of discretion.

Paul deGroot Bldg. Services, L.L.C. v. Gallacher, 112 P.3d 490 (Utah,2005). In Willey v. Willey, the Utah Supreme Court overturned this Court's determination as to attorneys fees and remanded the issue to the trial court for their analysis, finding that appellate courts should defer the issue to ensure legal accuracy and uniformity. *Ibid.*, 951 P.2d 226, 230-231 (Utah 1997). The Utah Supreme Court has indicated that the trial court has the sound discretion to make the determination of attorneys' fees. Salmon v. Davis, 916 P.2d 890, 892, 898 (Utah 1996).

In the instant case the trial court stated:

> The Court has received and carefully reviewed plaintiff's claim for attorney's fees. Based upon the amount of time devoted and the determination of the Court as to a reasonable hourly rate, the Court has awarded $10,000.00. The Court discounted the amount awarded for the following reasons: first, while plaintiff prevailed on the basic claim, there were a number of aspects of plaintiff's claim and defendant's Counterclaim that were not fully won by the plaintiff; second, given the amount of the claim and the actual result obtained, the initial attorney's fees claimed appeared to be excessive; and third, some of the time claimed (e.g., for trial preparation and related matters) also appeared to be excessive.

(*See* record p. 295, ¶1). In essence, the trial court recognized the balancing of the claims in its determination of an award of attorneys' fees in this matter. Additionally, the trial court determined that the fees submitted by the Appellants were excessive and that some of the time spent appeared to be excessive.

Appellants brought the matter before the trial court based upon nonpayment from Appellees, who were attempting to settle the matter through requesting an offset from the

Appellants for the damage incurred to the master bedroom ceiling. Having not determined to settle, Appellants filed the suit at issue herein and Appellees were required to defend themselves. The trial court found Appellants to be the prevailing party, although it offset the award based upon the damages incurred by Appellees, and awarded attorneys' fees to Appellant. Appellant then appealed the matter, again requiring Appellees to defend themselves and the trial court's Judgment based only on the Appellant's dissatisfaction with the amount awarded. Appellants now argue that they are entitled to additional attorneys fees if they prevail on appeal. (*See Brief of Appellant*, p. 25, ¶2).

In some instances, a party who prevails in the trial court and prevails on appeal *is* entitled to additional attorneys fees for the appeal, but it appears to only occur when it is the *defendant* who prevails in the trial court and then again on appeal, not the plaintiff/appellant. *See*, Sprouse v. Jager, 806 P.2d 219, 227 (Ut. App. 1991)("Because appellees were required to defend their position on appeal at their own expense and because their position was based on a contractual provision allowing for attorney fees, we follow the rule established in Management Services Corporation. v. Development Associates, 617 P.2d 406, 408-09 (Utah 1980) and followed more recently in Dixon v. Stoddard, 765 P.2d 879, 881 (Utah 1988) and award attorney fees for the cost of appeal.").

The Appellants brought the Appellees to trial for the purpose of enforcing the contract, prevailed at trial, and a judgment was awarded in their favor. Therefore, the original intent of enforcing the contract is not the reason for the appeal. Appellee did not prevail on her counterclaims, so a loss at trial is not the reason for the appeal. The trial court

already awarded Appellant's attorney fees, and damages, which was equitable for the purpose of enforcing the contract. Appellees are abiding by that current judgment issued by the trial court and thus are in compliance of the court orders.

Appellees continue to have to defend themselves on appeal at their own expense, even when Appellants have already prevailed at trial. This Court should not continue to require Appellees, who did not prevail at trial and were forced to continue to defend themselves on appeal, to pay Appellants' attorneys fees on appeal. Should this Court determine that the issue of attorneys' fees needs readdressing, it should remand the matter to the proper forum–the trial court–for determination. *See,* Willey.

## CONCLUSION

WHEREFORE, based upon the foregoing, Appellees respectfully request that this Court deny the relief sought by Appellants' on appeal and affirm the trial court's determination in this matter.

DATED this 28th day of June, 2006.

TYLER AYRES
Attorney for Appellees

## CERTIFICATE OF MAILING

I hereby certify that on the 28th day of June, 2006, I mailed first class, postage prepaid, two true and correct copies of the foregoing *Brief of Appellees* to the following:

JASON H. ROBINSON
ADAM T. MOW
BABCOCK SCOTT & BABCOCK
505 EAST 200 SOUTH, SUITE 300
SALT LAKE CITY, UT 84102

# Addendum ~A~

*Findings of Fact and Conclusions of Law*,
dated September 14, 2005

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**IN THE THIRD DISTRICT COURT OF SALT LAKE COUNTY**

**STATE OF UTAH**

| | |
|---|---|
| RON CASE ROOFING & ASPHALT PAVING, L.L.C., a Utah limited liability company,<br><br>Plaintiff,<br><br>vs.<br><br>PEGGY ANN STURZENEGGER a/k/a PEGGY ANN JOHNSON STURZENEGGER, an individual; CLARENCE GENE STURZENEGGER, an individual; and JOHN DOES 1-10,<br><br>Defendants. | **FINDINGS OF FACT AND CONCLUSIONS OF LAW**<br><br>Case No.: 030923024<br><br>Honorable John Paul Kennedy |

On Tuesday, August 2, 2005, the above-captioned action came before the Honorable Judge John Paul Kennedy on a bench trial. Plaintiff Ron Case Roofing & Asphalt Paving, L.L.C. ("**Ron Case Roofing**") was represented by Jason H. Robinson of BABCOCK SCOTT & BABCOCK. Defendants Peggy Ann Sturzenegger a/k/a Peggy Ann

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Johnson Sturzenegger ("**Peggy Sturzenegger**") and Clarence Gene Sturzenegger ("**Gene Sturzenegger**") (collectively the "**Sturzeneggers**") were represented by Tyler B. Ayres. Based upon the testimony and evidence presented at trial, and the pleadings, exhibits and documents on file in the above-referenced action, the Court makes the following Findings of Fact and Conclusions of Law:

## FINDINGS OF FACT

### *I. BACKGROUND*

1. Ron Case Roofing was, at all times relevant, properly licensed with the State of Utah, Department of Commerce, Division of Professional Licensing, as a roofing contractor.

2. The Sturzeneggers were, at all times relevant, a married couple.

3. The Sturzeneggers were, at all times relevant, owners of the subject detached single-family dwelling located at 1849 East 5600 South in Salt Lake City, Salt Lake County, State of Utah, and further described as LOT 1, LAKEWOOD # 6 SUB., Parcel No. 22-16-206-011-0000 (the "**Property**").

4. Peggy Sturzenegger is a high school graduate who attended Utah State University and who holds a Utah realtor's license. Peggy Sturzenegger is not a "babe in the woods".

5. As part of obtaining her realtor's license, Peggy Sturzenegger attended classes where she learned about contracts.

## *II. THE CONTRACT*

6. In or about November 2002, Peggy Stuzenegger solicited proposals from at least three roofing contractors, including Ron Case Roofing, for roofing services for the Property.

7. On or about November 19, 2002, Shain Case, a representative of Ron Case Roofing, met with Peggy Sturzenegger and observed the existing tar and gravel roof system at the Property.

8. Due to the inherent nature of a roof, Shain Case was able to observe only the surface of the roof. He was unable to observe what lie beneath the tar and gravel surface; such as the number of existing roof systems (previous roofs applied over the top of each other) and the condition of the existing substrate. (The substrate is the underlying wooden deck to which the tar and gravel roof system is applied and which supports the same).

9. During the meeting, Shain Case prepared "Proposal and Contract No. 3R3074S" for work to be performed at the Property (the "**Contract**"), a copy of which was left with Peggy Sturzenegger for her review and execution. (The Contract was admitted into evidence at trial as Exhibit No. 6).

10. The Court found that the Contract is fairly straight forward.

11. The roofing services identified on the Contract included removal of the existing roofing membrane to the roof deck, installation of a new built-up tar and gravel



7 (19)

roof system, installation of new aluminum gutters and downspouts, installation of new high rise gravity vents, and installation of a new gravel stop (the "**Work**").

12. The estimated price for the Work was $12,450.00 (the "**Original Price**").

13. In addition to the Work, the Contract provided for contingencies, such as the existence of more than one roof system needing to be removed; the substrate needing new wood sheeting; and other conditions, which will be discussed below.

14. The contingencies, if encountered, would increase the Original Price.

15. Peggy Sturzenegger was aware that more than one roof system had been installed at the Property, but did not disclose this information to Ron Case Roofing.

16. Peggy Sturzenegger did not invite Ron Case Roofing to inspect the interior of the Property and did not inform Ron Case Roofing that her master bedroom had an exposed vaulted tongue-and-groove ceiling.

17. Peggy Sturzenegger had the Contract in her possession from November 19, 2003 through April 14, 2003.

18. Peggy Sturzenegger reviewed the Contract.

19. On or about April 14, 2003, Peggy Sturzenegger signed the Contract.

20. Peggy Sturzenegger signed the Contract as "Agent for Owners or Owner".

21. Provision 1 of the Contract defines the term "Owner" as the "Owner of the building, owner's architect, general contractor, owner's agent or others acting in behalf of owner."

22. On or about April 14, 2003, Peggy Sturzenegger paid Ron Case Roofing $6,000.00 as a deposit for the Work.

23. Peggy Sturzenegger was aware that, pursuant to the Contract, Ron Case Roofing was to commence the Work within ten business days.

## *III. THE WORK AND EXISTING CONDITIONS*

24. On Wednesday, April 22, 2003 (within ten business days), Ron Case Roofing traveled to the Property to commence the Work.

25. Ron Case Roofing arrived at the Property with two trucks, a roofing kettle, at least one dumpster, and other roofing equipment.

26. The trucks had Ron Case Roofing decals on them.

27. Ron Case Roofing needed to place a dumpster in the driveway at the Property.

28. Ron Case Roofing's foreman knocked on the door of the Property, introduced himself as a representative of Ron Case Roofing, and asked if there were any cars in the garage that needed to be moved before Ron Case Roofing placed the dumpster in the driveway (which would block access to the garage) and commenced the Work.

29. Peggy Sturzenegger moved her car so that Ron Case Roofing could mobilize on the Property and commence the Work.

30. Peggy Sturzenegger left the Property.

31. Peggy Sturzenegger did not tell Ron Case Roofing where she was going or when she would return.

32. Ron Case Roofing personnel believed that Peggy Sturzenegger would be returning shortly, so they continued mobilizing and commenced the Work.

33. Peggy Sturzenegger was aware that Ron Case Roofing was mobilizing on the Property to commence the Work.

34. Ron Case Roofing subsequently learned that Peggy Sturzenegger was, in fact, leaving for Hawaii and would be away from the Property for three days. (This was learned after Peggy Sturzenegger's return from Hawaii).

35. Peggy Sturzenegger did not inform Ron Case Roofing that she was leaving for Hawaii and did not instruct Ron Case Roofing to suspend performing the Work.

36. Peggy Sturzenegger could have contacted Ron Case Roofing at anytime to inform them of her travel plans.

37. The Contract sets forth Ron Case Roofing's office telephone number (upper left hand corner), office fax number (upper left hand corner), and Shain Case's personal cell phone number (upper right hand corner).

38. Ron Case Roofing's office telephone number is also published in the Salt Lake City telephone directory.

39. Provision 21 of the Contract states in pertinent part that the "Contractor will proceed with the work once it is commenced on a continual basis. . . ."

40. It is important that roofing work be performed on a continual basis so as to avoid exposing the open roof to the elements, etc.

41. There was rainfall around the time Ron Case Roofing performed the Work and the Extra Work.

42. Upon removal of the first layer of tar and gravel roofing system, Ron Case Roofing discovered an additional, previous roof system layer covering the roof surface, which Ron Case Roofing had to remove.

43. Provision 10 of the Contract provides: "If tear off is required, this bid price is based on one roof removal. If more than one roof exists, there will be an added charge of .45 cents per square foot for each additional roof to be removed."

44. Upon removal of the tar and gravel roofing systems, Ron Case Roofing observed the existing roof deck and its condition.

45. Ron Case Roofing determined that the existing roof deck was in unsatisfactory condition for installation of the new built-up tar and gravel roof system.

46. The International Building Code, which has been adopted by Utah, provides at Section 1510.2 as follows:

> **Structural and construction loads.** Structural roof components shall be capable of supporting the roof-covering system and the material and equipment loads that will be encountered during installation of the system.

47. At the time of this determination, Peggy Stuzenegger was not at the Property and could not be otherwise contacted.

48. At the time of this determination, no one having information on Peggy Sturzenegger's whereabouts was at the Property.

49. At no time while performing the Work did Ron Case Roofing have a telephone number where Peggy Sturzenegger could be reached or any other means of contacting her.

50. Provision 13 of the Contract provides as follows:

> If a problem should arise and workmen cannot contact Customer, Contractor will proceed with job utilizing Contractor's best judgment. In the event that additional costs are incurred by Contractor under these circumstances, Customer authorizes Contractor to proceed with the project and agrees to pay any increase in costs.

51. Because Peggy Sturzenegger was unavailable, Shain Case, of Ron Case Roofing, took photographs of the roof, using a digital camera, so that Ron Case Roofing could show Peggy Sturzenegger that there was more than one roof system on the Property and that the substrate was in poor condition and in need of new sheeting.

52. Ron Case Roofing's foreman was present when the photographs of the roof at the Property were taken.

53. Ron Case Roofing, using its best judgment, determined that the substrate needed new sheeting to support the new built-up tar and gravel roof system and the

material and equipment loads that would be encountered during the installation of the system.

54. Ron Case Roofing installed new 7/16" OSB sheeting over the existing roof deck, which provided a satisfactory roof deck surface for installation of the new built-up tar and gravel roof system.

55. The terms of the Contract provide in pertinent part: "Sheeting will be inspected for damage and replaced if needed at $1.59 per square foot."

56. At trial, both experts testified that $1.59 was a reasonable amount to be charged for the sheeting.

57. At trial, there was no evidence presented as to a different amount that should have been charged, other than the $1.59 amount set forth in the Contract, for the sheeting.

58. In addition to removing the extra roof system and installing the new sheeting, Ron Case Roofing determined, using its best judgment, that the following extra work needed to be performed:

A. Upon removal of the evaporative cooler from the roof, Ron Case Roofing discovered that the existing metal base upon which the evaporative cooler sits had rusted out and was inadequate to support the evaporative cooler. Ron Case Roofing constructed and installed a box to support the evaporative cooler.

B. During the Work, Ron Case Roofing discovered that three large pipe flashings had rusted out and were in need of replacement. Ron Case Roofing replaced these three large pipe flashings with new large pipe flashings.

C. During the Work, Ron Case Roofing discovered that behind the roof fascia at a corner of the Property a portion of the wood had rotted away. Ron Case Roofing furnished new wood and performed carpentry work to repair this area of the roof.

D. Peggy Sturzenegger requested three extra downspouts. Ron Case Roofing furnished these three extra downspouts.

E. Ron Case Roofing was required to furnish an extra dumpster at the Property to contain and haul away the construction debris.

59. The work described in paragraphs 42 through 58 is hereinafter sometimes referred to as the "Extra Work".

60. The Extra Work performed by Ron Case Roofing increased the Original Price, as provided for by the Contract.

61. On or about Friday, April 25, 2003, Ron Case Roofing completed the Work and the Extra Work, pursuant to the terms of the Contract.

## *IV. THE BILLING STATEMENT*

62. On or about April 25, 2003, Shain Case provided to Peggy Sturzenegger a billing statement (the "**Billing Statement**"). (The Billing Statement was admitted into evidence at trial as Exhibit No. 10).

63. The Billing Statement states a balance due of $16,578.00 for the Work and Extra Work, as follows:

| | |
|---|---|
| $12,450.00 | Original Price for Work |
| $1,800.00 | Tear off and remove 4,000 square feet of extra roofing at .45 cents per square foot |
| $7,314.00 | Install 4,600 square feet of sheeting at $1.59 per square foot |
| $285.00 | Construct and install cooler box |
| $267.00 | Install three extra large pipe flashings |
| $85.00 | Perform extra carpentry work |
| $177.00 | Furnish and install three extra downspouts at $59.00 each |
| $200.00 | Furnish an extra dumpster |
| ($,6000.00) | Down payment |
| $16,578.00 | Total principal balance owed |

64. Peggy Sturzenegger has not paid to Ron Case Roofing any of the Invoice balance of $16,578.00.

65. Peggy Sturzenegger admitted in her Answer to Ron Case Roofing's Complaint that some monies are owed to Ron Case Roofing for the Work. See Answer, ¶ 22 ("Admits that an amount is due Ron Case Roofing.")

## *V. THE MASTER BEDROOM DAMAGE*

66. The master bedroom of the Property had an exposed vaulted, wood, tongue-and-groove ceiling.

67. As explained above, Peggy Sturzenegger did not inform Ron Case Roofing that she had an exposed vaulted tongue-and-groove ceiling in her master bedroom.

68. She also did not invite Ron Case Roofing to inspect the interior of the Property.

69. Provision 19 of the Contract provides in pertinent part:

> Unless Customer requests Contractor's employee to inspect the interior surfaces of the building before roofing is commenced by Contractor it will be assumed that the interior damages were caused prior to commencement of roof work by Contractor and owner agrees to hold Contractor harmless for such damages.

70. When Ron Case Roofing personnel inspected the roof of the Property, they had no reason to know that there was an exposed vaulted tongue-and-groove ceiling over the master bedroom.

71. Most homes have insulation above the ceiling. The insulation is typically installed in the interior of the home in the void under the roof substrate and above the ceiling. With an exposed vaulted tongue-and-groove ceiling, there is no such void. Consequently, there is typically a layer of rigid insulation installed on the exterior of the home over the top of the roof's substrate.

72. The Property did not have a layer of insulation on the roof over the master bedroom.

73. The nails used for installation of the new sheeting pierced the master bedroom ceiling.

74. When Ron Case Roofing began installing a new roof vent, it cut through the master bedroom ceiling and discovered that the master bedroom had an exposed vaulted tongue-and-groove ceiling.

75. On or about April 25, 2003, Peggy Sturzenegger returned to the Property and saw the condition of the master bedroom ceiling.

76. Peggy Sturzenegger contacted Shain Case regarding the condition of the master bedroom ceiling.

77. Provision 17 of the Contract states in pertinent part that if there is "[a]ny damage caused by Contractor for which Contractor may be liable . . ., Contractor shall be given first opportunity to repair said damage before other Contractors are retained by owner."

78. On or about June 13, 2003, Ron Case Roofing, through counsel and by letter, communicated to the Sturzeneggers' attorney, its readiness and willingness to repair the master bedroom ceiling pursuant to provision 17 of the Contract. (The letter was admitted into evidence at trial as Exhibit No. 12).

79. Ron Case Roofing suggested several options for repairing the master bedroom ceiling.

80. Ron Case Roofing estimated that its cost to repair the master bedroom ceiling would be $1,500.00.

81. Peggy Sturzenegger refused to allow Ron Case Roofing make any repairs to the master bedroom ceiling.

82. Peggy Sturzenegger also refused to allow Ron Case Roofing to perform any clean-up work related to the master bedroom ceiling.

83. On or about July 29, 2003, Peggy Sturzenegger contracted with Scorpion of Salt Lake ("**Scorpion**") to make repairs to the master bedroom ceiling in exchange for payment in the amount of $3,000.00.

84. Provision 16 of the Contract provides that "[n]o cost of service, materials, or goods supplied by owner or owner's agent, Contractor, or employees shall be charged back against Contractor's invoice, unless such services, goods, or materials were furnished to Contractor or its employees, pursuant to Purchase Order issued by Contractor."

85. Peggy Sturzenegger never requested a Purchase Order for use of Scorpion to repair the master bedroom ceiling, and a Purchase Order was never issued by Ron Case Roofing for such.

86. On or about July 29, 2003, Scorpion of Salt Lake made the repairs to the master bedroom ceiling.

87. At trial, Ron Case Roofing remained willing to deduct its estimated cost of $1,500.00 from the outstanding contract balance for the master bedroom ceiling repairs.

## *VI. THE ALLEGED LEAK*

88. In March of 2004, Peggy Sturzenegger contacted Ron Case Roofing regarding an alleged leak in the roof at the Property.

89. On or about March 18, 2004, Ron Case Roofing inspected the roof at the Property for leakage by disbursing water on the roof.

90. After Ron Case Roofing began disbursing water on the roof, Peggy Sturzenegger demanded that Ron Case Roofing stop its inspection, claiming she was concerned about her water bill.

91. At trial, Ron Case Roofing's expert testified that the leak complained of by Peggy Sturzenegger was not a problem with the roof system installed by Ron Case Roofing.

92. At trial, there was no evidence presented that the roof was still leaking.

## *VII. THE MECHANIC'S LIEN*

93. Because Ron Case Roofing was not paid in full for the Work and Extra Work, it caused a Notice of Mechanic's Lien to be filed against the Property (the "**Lien**"), a copy of which is attached to Ron Case Roofing's Complaint as Exhibit "B".

94. The Lien was recorded on June 13, 2003.

95. The Lien was mailed to the Sturzeneggers, by certified mail, at the Property on June 13, 2003.

96. The Sturzeneggers received the certified mailing at the Property and on or about June 18, 2003, and Gene Sturzenegger signed for the same.

### *VIII. INTEREST*

97. Provision 2 of the Contract states in pertinent part as follows:

> In the event payments are not timely made, a finance charge of 3% per month will be charged on the unpaid balance from the date of completion to the date of payment before and after judgment.

### *IX. ATTORNEY FEES AND COSTS*

98. Provision 2 of the Contract states in pertinent part as follows:

> Customer agrees to pay all cost of collection and attorney's fees after default and referral to attorney and further agrees to pay after judgment costs of collection.

## CONCLUSIONS OF LAW

The foregoing Findings of Fact are incorporated herein by this reference.

### *I. FIRST CAUSE OF ACTION: BREACH OF CONTRACT*

1. Ron Case Roofing was, at all times relevant, a licensed contractor.

2. Pursuant to the Contract, Ron Case Roofing agreed to perform the Work for the Original Price of $12,450.00.

3. Peggy Sturzenegger agreed to pay the amount of $12,450.00 for the Work.

4. In addition to the Work, the Contract provided for contingencies including, but not limited to, the following:

A. If there was more than one roof system, Peggy Sturzenegger agreed to pay .45 cents per square foot for removal of the same.

B. If the existing substrate needed new sheeting, Peggy Sturzenegger agreed to pay $1.59 per square foot for the replacement of the same.

C. If there were problems requiring extra work, and Ron Case Roofing was unable to contact Peggy Sturzenegger, Peggy Sturzenegger agreed that Ron Case Roofing could proceed with the work, using its best judgment, and Peggy Sturzenegger agreed to pay for any such work so performed.

5. At trial, Ron Case Roofing claimed it was owed the following amounts:

| | | |
|---|---|---|
| 1 | $12,450.00 | Original Price for Work |
| 2 | $1,800.00 | Tear off and remove 4,000 square feet of extra roofing at .45 cents per square foot |
| 3 | $7,314.00 | Install 4,600 square feet of sheeting at $1.59 per square foot |
| 4 | $285.00 | Construct and install cooler box |
| 5 | $267.00 | Install three extra large pipe flashings |
| 6 | $85.00 | Perform extra carpentry work |
| 7 | $177.00 | Furnish and install three extra downspouts at $59.00 each |
| 8 | $200.00 | Furnish an extra dumpster |
| | ($,6000.00) | Down payment |
| | ($1,500.00) | Ron Case Roofing's estimated cost to repair master bedroom ceiling |
| | $15,078.00 | Total principal balance owed |

6. The Court found that Ron Case Roofing performed the Work and the Extra Work set forth in the Billing Statement, as outlined above.

7. The Court found that Ron Case Roofing was entitled to the full amounts sought, and set forth above in paragraph 5, with the exception of items 3, 4, 5, 6, and 7.

8. As to item number 3, the Court found that Peggy Sturzenegger should be required to pay $1.25 per square foot for the sheeting, instead of $1.59 per square foot as set forth in the Contract.

9. As to items 4-7, the Court found that Peggy Sturzennger should not be required to pay for the same.

10. The Court found that Ron Case Roofing is entitled to the following principal amounts under its breach of contract cause of action:

| | |
|---|---|
| $12,450.00 | Original Price for Work |
| $1,800.00 | Tear off and remove 4,000 square feet of extra roofing at .45 cents per square foot |
| $5,750.00 | Install 4,600 square feet of sheeting at $1.59 per square foot |
| $0 | Construct and install cooler box |
| $0 | Install three extra large pipe flashings |
| $0 | Perform extra carpentry work |
| $0 | Furnish and install three extra downspouts at $59.00 each |
| $200.00 | Furnish an extra dumpster |
| ($,6000.00) | Down payment |
| ($1,500.00) | Ron Case Roofing's estimated cost to repair master bedroom ceiling |
| $12,700.00 | Total principal balance owed |

11. The Court found that failure to pay Ron Case Roofing the amounts referenced above in paragraph 10, when they became due and owing, constitutes a material breach of contract for which Ron Case Roofing is entitled to recover.

12. The Court found that Ron Case Roofing is the prevailing party.

13. Pursuant to the Contract, Ron Case Roofing is entitled to an award of its costs of collection, including attorney fees.

## *II. OFFSET*

14. Peggy Sturzenegger claimed offsets for the damage to her master bedroom ceiling and for alleged deficiencies in the roof system installed by Ron Case Roofing.

### A. Master Bedroom Ceiling.

15. Ron Case Roofing had a right, pursuant to the Contract, to repair the damage to the master bedroom ceiling.

16. Ron Case Roofing requested that it be allowed to repair the damage to the master bedroom ceiling.

17. Peggy Sturzenegger refused to allow Ron Case Roofing to repair the damage to the master bedroom ceiling.

18. The Court found that Peggy Sturzenegger went off and did her own thing.

19. There was no evidence presented at trial that the $3,000.00 paid by Peggy Sturzenegger for repair of the master bedroom ceiling was a reasonable amount.

20. The Court, using "Kentucky windage" numbers granted Peggy Sturzenegger an offset of $2,400.00 (which included the $1,500.00 that Ron Case Roofing voluntarily deducted from its claim as its estimated cost to repair the master bedroom ceiling).

**B. Deficiencies with Roof System.**

21. The Court found that there were certain deficiencies with the roof system installed by Ron Case Roofing.

22. There was no evidence presented at trial as to the dollar value of the deficiencies.

23. The Court, using "Kentucky windage" numbers, granted Peggy Struzenegger an offset of $1,500.00.

24. With the offsets, set forth above, the Court found that Ron Case Roofing is owed the principal amount of $10,264.00.

***III. SECOND CAUSE OF ACTION: UNJUST ENRICHMENT / QUANTUM MERUIT (in the alternative to the first cause of action for breach of contract)***

25. Pursuant to the terms of the Contract, Peggy Sturzenegger requested that Ron Case Roofing perform the Work and the Extra Work.

26. Ron Case Roofing performed the Work and the Extra Work.

27. The Work and Extra Work benefited and improved the Property and conferred a benefit upon Peggy Sturzenegger and the Property.

28. Ron Case Roofing performed the Work and the Extra Work with the expectation of being compensated for the reasonable value thereof and has not acted as a volunteer or intermeddler.

29. To permit Peggy Sturzenegger and the Property to retain the benefit of the Work and Extra Work without compensating Ron Case Roofing for the same would

result in unjust enrichment of Peggy Sturzenegger and the Property at the expense of Ron Case Roofing, which should not be allowed.

30. The reasonable value of the Work and Extra Work, less the offsets set forth above, is $10,264.00.

## *IV. THIRD CAUSE OF ACTION: FORECLOSURE OF LIEN*

31. Ron Case Roofing performed the Work and the Extra work at the request of Peggy Sturzenegger.

32. The Court found that Peggy Sturzenegger was the "owner" of the Property.

33. Ron Case Roofing's Complaint provides, at paragraph 5, as follows:

> Peggy Sturzenegger entered into a contract with Ron Case Roofing, a copy of which is attached hereto as Exhibit "A" (the "**Contract**"), to have certain roofing work, as set forth in the Contract, performed for an existing detached single-family dwelling situated upon real property **owed by the Sturzeneggers** and located at approximately 1849 East 5600 South, Salt Lake City, Utah, and more specifically described as follows:
>
> LOT 1, LAKEWOOD #6 SUB.
> Parcel No. 22-16-206-011-0000

(Emphasis added).

34. Peggy Sturzenegger, in her Answer to Ron Case Roofing's Complaint, admitted the allegations set forth in paragraph 5 of Ron Case Roofing's Complaint.

35. Gene Sturzenegger, in his Answer to Ron Case Roofing's Complaint, admitted the allegations set forth in paragraph 5 of Ron Case Roofing's Complaint.

36. At trial, Ron Case Roofing's counsel explained, based upon the Complaint and Answer filed in the above-captioned action, that the Sturzeneggers admitted that at all relevant times they were both owners of the Property.

37. Ron Case Roofing's counsel also explained that the Sturzeneggers had not amended their respective Answers.

38. The Sturzeneggers did not attempt to amend their respective Answers at trial.

39. The Court took judicial notice of the Sturzeneggers' admission that they were, at all times relevant, both owners of the Property.

40. Counsel for the Sturzeneggers stipulated that the Court could take judicial notice of the Sturzeneggers' admission that they were, at all times relevant, both owners of the Property.

41. Based upon the Court's taking take judicial notice of the Sturzeneggers' admission that they were, at all times relevant, both owners of the Property, Ron Case Roofing's counsel forwent questioning the witnesses regarding ownership and authority to contract under Utah's mechanic's lien statute.

42. Ron Case Roofing caused the Lien to be recorded on June 13, 2003, within ninety days of Ron Case Roofing's last date of performing work on the Property, in compliance with Utah Code Section 38-1-7.

43. Ron Case Roofing sent a copy of the Lien, by certified mail, to Mr. Sturzenegger on June 13, 2003, within thirty days of the date the Lien was filed, in compliance with Utah Code Section 38-1-7.

44. Ron Case Roofing filed the instant foreclosure action on October 17, 2003, within 180 days of its last work, in compliance with Utah Code 38-1-11.

***V. JUDGMENT LIEN***

45. The Court found that Ron Case Roofing is entitled to a judgment lien against the Property.

46. The judgment lien shall relate back to and take effect as of April 22, 2003, and shall be superior to and have priority over, as a matter of time and right, any and all encumbrances recorded against the Property subsequent thereto.

47. The judgment lien shall attach to any and all interest held in and to the Property by Peggy Sturzenegger and/or Gene Sturzenegger.

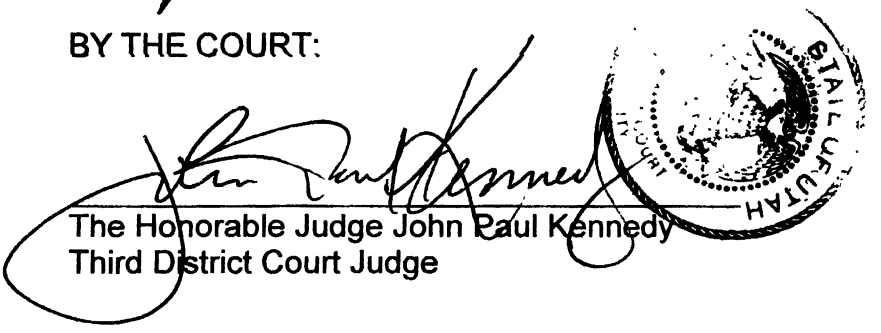
48. Ron Case Roofing shall not be allowed to execute on its judgment lien against the Property.

49. Ron Case Roofing may, however, execute against any other property and may use all other legal means of and methods for collecting its Judgment.

50. Ron Case Roofing will be allowed to execute on its judgment lien against the Property in the event the Property is ever sold or otherwise transferred.

DATED this 13 day of Sept, 2005.

BY THE COURT:



The Honorable Judge John Paul Kennedy
Third District Court Judge



7101

***NOTICE TO PARTIES AND THEIR COUNSEL***

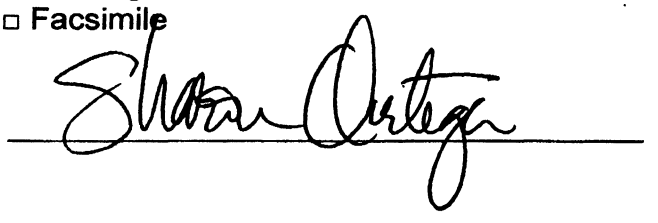
You are hereby notified that pursuant to Utah Rule of Civil Procedure 7(f)(2), any objections to these Findings of Fact and Conclusions of Law shall be filed within five (5) days of service hereof, together with any additional time provided for by Utah Rule of Civil Procedure 6(e). Upon the earlier of being served with an objection to the proposed order or expiration of the time to object, counsel for Plaintiff will file these Findings of Fact and Conclusions of Law with the Court.

**CERTIFICATE OF SERVICE**

I hereby certify that on this ~~16th~~ 17th day of August, 2005, a true and correct copy of the foregoing document was served by the method indicated below, to the following:

Tyler B. Ayres
3267 East 3300 South, #126
Salt Lake City, Utah 84109

☑ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile





3107

# Addendum ~B~

*Final Judgment*, dated October 13, 2005

Final Judgment @J

JD17521250
030923024 STURZENEGGER,PEGGY ANN

IMAGED

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

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| | | |
|---|---|---|
| RON CASE ROOFING & ASPHALT PAVING, L.L.C., a Utah limited liability company, | : | FINAL JUDGMENT |
| | : | CASE NO. 030923024 |
| Plaintiff, | : | |
| vs. | : | |
| PEGGY ANN STURZENEGGER, aka PEGGY ANN JOHNSON STURZENEGGER, an individual; CLARENCE GENE STURZENEGGER, an individual; and JOHN DOES 1-10, | : | |
| Defendants. | : | |

FILED DISTRICT COURT
Third Judicial District

OCT 12 2005

SALT LAKE COUNTY

By _____ Deputy Clerk

ENTERED IN REGISTRY OF JUDGMENTS

DATE 10/13/05

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On Tuesday, August 2, 2005, the above-captioned action came before the Honorable John Paul Kennedy on a bench trial. Plaintiff Ron Case Roofing & Asphalt Paving, L.L.C. ("Ron Case Roofing"), was represented by Jason H. Robinson of Babcock, Scott & Babcock. Defendants Peggy Ann Sturzenegger, aka Peggy Ann Johnson Sturzenegger ("Peggy Sturzenegger") and Clarence Gene Sturzenegger ("Gene Sturzenegger") (collectively the "Sturzeneggers") were represented by Tyler B. Ayres.

The Court, having reviewed all pleadings and Memoranda on file in the above-captioned action and the authorities cited therein, having taken evidence, having considered the arguments of counsel, and having made findings of fact and conclusions of law, and being fully advised in the premises, hereby orders, adjudges and decrees, as follows:

7014

**ATTORNEY'S FEES**

The Court has received and carefully reviewed plaintiff's claim for attorney's fees. Based upon the amount of time devoted and the determination of the Court as to a reasonable hourly rate, the Court has awarded $10,000. The Court discounted the amount awarded for the following reasons: first, while plaintiff prevailed on the basic claim, there were a number of aspects of plaintiff's claim and defendants' Counterclaim that were not fully won by the plaintiff; second, given the amount of the claim and the actual result obtained, the initial attorney's fees claimed appeared to be excessive; and third, some of the time claimed (e.g., for trial preparation and related matters) also appeared to be excessive.

**JUDGMENT**

Judgment is hereby entered in favor of Ron Case Roofing and against defendant Peggy Sturzenegger, as follows:

| | |
|---|---|
| Principal | $10,264.00 |
| Costs | 487.65 |
| Attorney's fees | 10,000.00 |
| Total Judgment | $20,751.65 |

**IT IS ORDERED,** pursuant to Utah Code Ann., Section 15-1-4(3), that interest shall accrue at the rate of 4.82% per annum from the date this Judgment is entered until this Judgment is paid in full.

**IT IS FURTHER ORDERED,** that this judgment shall be augmented in the amount of reasonable costs and attorney fees expended in collecting said Judgment, as shall be established by Affidavit.

**JUDGMENT LIEN**

AND IT IS FURTHER ORDERED, that this Judgment shall be a Judgment lien on and against that certain real property located at approximately 1849 East 5600 South, Salt Lake City, Utah, and more specifically described as follows:

LOT 1, LAKEWOOD #6 SUB.
Parcel No. 22-16-206-011-0000

(the "Property"). The Judgment lien shall relate back to and take effect as of April 22, 2003, and shall be superior to and have priority over, as a matter of time and right, any and all encumbrances recorded against the Property subsequent thereto. The Judgment lien shall attach to any and all interest held in and to the Property by Peggy Sturzenegger and/or Gene Sturzenegger.

Ron Case Roofing shall not be allowed to execute on its Judgment lien against the Property unless and until such time as the Property is sold or otherwise transferred. In the meantime, however, Ron Case Roofing may execute on and against any other real and personal property

and may use all other legal means of and methods for collecting its Judgment.

Dated this 12 day of October, 2005

JOHN PAUL KENNEDY
DISTRICT COURT JUDGE

**MAILING CERTIFICATE**

I hereby certify that I mailed a true and correct copy of the foregoing Final Judgment, to the following, this 12 day of October, 2005:

Robert F. Babcock
Jason H. Robinson
Attorneys for Plaintiff
505 East 200 South, Suite 300
Salt Lake City, Utah 84102

Tyler B. Ayres
Attorney for Defendants
3267 East 3300 South, Suite 126
Salt Lake City, Utah 84109